THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23676 OF 2006

ORAL ORDER:

This writ petition is filed seeking a declaration that the possession notice dated 22.6.2006 issued by the respondents under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act") as arbitrary and illegal. The petitioner did not dispute the fact that he had availed the financial assistance from the 1st respondent-Bank by depositing title deeds of the property in question i.e., Flat No.G-4 in Plot No.37/A in Sy.No.459 of Sri Sai Lakshmi Apartments situated at Gayathri Nagar, Kapra, R.R.District as security and, subsequently, there was default in payment of the instalments. However, it is contended that since he has already paid substantial amounts, and that apart, his request to reschedule the loan account, which is a 15 year term loan, is still under consideration, the impugned action of the respondents is unwarranted. It is also contended that the respondents failed to comply with the mandatory provisions of the Act and no demand notice as required under Section 13(2) of the Act was issued and, therefore, on that ground alone the impugned proceedings are liable to be set aside.

A counter affidavit has been filed on behalf of the respondent-Bank stating that the demand notice dated 12.4.2006 under Section 13(2) of the Act was published on 14.4.2006 in local dailies calling upon the petitioner to repay the loan amount within 60 days. The said notice was sent to the writ petitioner by Registered Post with Acknowledgment Due. However, the same was returned with an endorsement no such person. In the circumstances, the said notice was affixed at the outer door of the mortgaged premises on 14.4.2006. Thereafter, having waited for 60 days, since the petitioner failed to respond, possession notice was published on 22.6.2006. Thus, it is

contended that the action of the respondents cannot be found fault with on any ground whatsoever.

I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondents.

At the outset, it is to be noted that Section 17 of the Act provides for an alternative remedy by making an application by any person aggrieved by any of the measures referred to sub-section (4) of Section 17 of the Act. In view of the said alternative remedy, the petitioner cannot straightway maintain this writ petition under Article 226 of the Constitution of India, particularly since the matter involves several disputed questions of fact.

Accordingly, without expressing any opinion on merits, the writ petition is disposed of granting leave and liberty to the petitioner to work out the remedy under Section 17 of the Act. No costs.

Having regard to the fact that the property in question is a residential flat, there shall be stay of dispossession for a period of four weeks from today and the petitioner is granted liberty to make an application under Section 17 of the Act within two weeks from today, in which event, the same shall be considered and appropriate orders be passed in accordance with law.

2nd July, 2007. **(G. ROHINI, J.)**
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.23676 OF 2006

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2nd July, 2007.

Between:

D. Ramulu. ..Petitioner.

And

The Authorised Officer,
State Bank of India,
Prasanthnagar (Uppal) Branch,
Hyderabad and another. .. Respondents.